



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,117	07/24/2003	Peter Dam Neilsen	857.0019.U1(US)	3924
29683 7590 12/30/2008 HARRINGTON & SMITH, PC 4 RESEARCH DRIVE, Suite 202 SHELTON, CT 06484-6212				
EXAMINER TIMBLIN, ROBERT M				
ART UNIT		PAPER NUMBER		
2167				
MAIL DATE		DELIVERY MODE		
12/30/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/627,117

Applicant(s)

NEILSEN ET AL.

Examiner

ROBERT TIMBLIN

Art Unit

2167

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 October 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2, 3, 5-9, 20, 23, 33-40, 46 and 52-60 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2, 3, 5-9, 20, 23, 33-40, 46, 52-60 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

This Office Action corresponds to application 10/627,117 which was filed 7/24/2003. Claims 2, 3, 5-9, 20, 23, 33-40, 46, and 52-60 are pending.

Reopening after Pre-Appeal Conference

In view of the Pre-Appeal Request filed on 10/6/2006 PROSECUTION IS HEREBY REOPENED. A new ground of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below: /John R. Cottingham/

Supervisory Patent Examiner, Art Unit 2167

Claim Objections

Depending claims 2-3, 5-9, 23, 34, 36-40, 52 are objected to because the first letter of the claims (i.e. "A") should be "The" as to clearly indicate their dependence and further limiting features upon their corresponding parent claims.

Claim 46 and depending claims are objected to because "embodying" should be "storing" or similar language. Specifically as is, the term "embodying" may lead one to construe that the memory is non-statutory subject matter (i.e. a carrier wave)¹. As such, "storing" or similar language would clearly indicate that the memory is a hardware component of a mobile device and avert issues under 35 U.S.C. 101.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

¹ Examiner notes that (cancelled) original claims 47, 49, 51 support this interpretation by phrasing a "record carrier *embodying*" a computer program.

Claims 2, 3, 5-6, 8-9, 20, 23, 33-37, 39-40, 46, and 52-58 and 60 are rejected under 35 U.S.C. 102(e) as being taught by Meffert et al. ('Meffert' hereafter) who filed U.S. Patent Application 2003/0037261.

With respect to claim 2, A method as claimed in claim 23, further comprising subsequent to step d), requesting entry of a first password to enable the further display of the first data assemblage and subsequent to step f), requesting entry of the first password to enable the further display of the second data assemblage does not restrict the data being displayed for the first time using the password (0120; "the trial level access permits the user is permitted to listen to the song/track once and thereafter is precluded from listening without again obtaining the proper authorization").

With respect to claim 3, A method as claimed in claim 23, further comprising, before step a), wirelessly receiving the first data assemblage at the hand portable device (0045) and before step e), wirelessly receiving the second data assemblage at the hand portable device (0098).

With respect to claim 5, A method as claimed in claim 23, further comprising:
discriminating the type of a data assemblage (0126; e.g. a song file), wherein the automatic restriction of further display (0120, 0127) at step d) is enabled only for the first data assemblage of a defined type or types (0126) and the automatic restriction (0120, 0127) of further display at step f) is enabled only for the second data assemblage of the

defined type or types (0123 "per song" indicates the method applicable to each [additional/second] file).

With respect to claim 6, A method as claimed in claim 5, further comprising user specification of the defined type(s) for which automatic restriction of further display is enabled (fig. 3).

With respect to claim 8, A method as claimed in claim 23, wherein the first data assemblage is one of:

SMS message, a MMS message, an instant messaging history, a picture file; an audio file; a video file; or a collection of bookmarks and wherein the second data assemblage is one of: a SMS message, a MMS message, an instant messaging history, a picture file; an audio file; a video file; or a collection of bookmarks (0037).

With respect to claim 9, A method as claimed in claim 23 wherein at least one of the first data assemblage and the second data assemblage is created in the device (drawing reference 2001 and 0091).

With respect to claim 20, A method comprising:

a) storing (0041, 0080; e.g. downloading content) a plurality of data assemblages (0037; e.g. "...system and method that sends data such as documents, email, music files, XML content, etc. (hereinafter "content")) in a hand portable device (0041, 0130);

b) storing at least one data attribute (0122; e.g. "songs/tracks are stored with certificates and are ready for sales..." and 0126; e.g. "the trial key that is preferable attached to the content") for each (0123; "...certificate generated per song...") of the plurality of data assemblages (0037; e.g. "...system and method that sends data such as documents, email, music files, XML content, etc. (hereinafter "content")), the data attribute (0122; e.g. "songs/tracks are stored with certificates and are ready for sales..." and 0126; e.g. "the trial key that is preferable attached to the content" as well as DRM information, 0125) indicative of first display (0120) of the data assemblage in the device (0041, 0130);

c) displaying for a first time (0049, 0126; e.g. a "trial play" i.e. single use or viewing one time only) in the hand portable device (0041, 0130) a first data assemblage (0126) of the plurality (0037; e.g. "...system and method that sends data such as documents, email, music files, XML content, etc. (hereinafter "content")) without regard to a first security mechanism (0120; "the trial level access permits the user is permitted to listen to the song/track once and thereafter is precluded from listening"), and responsive to the displaying for the first time (0126; e.g. a "trial play" i.e. single use) automatically changing the data attribute (0120, 0127) of the first data assemblage from a first type to a second type (0031, 0126-0127; e.g. therein it is described that a file subject to a trial use is able to be accessed and thereafter not entitled to further playing. As such, an attribute for viewing is described to be changed after expiration of the trial period/use); and

d) in response to changing the data attribute type (0031, 0126-0127) of step c), automatically restricting further display (0120, 0127) of the first data assemblage (0126) using the first security mechanism (0120; "the trial level access permits the user is permitted to listen to the song/track once and thereafter is precluded from listening" without again obtaining the proper authorization).

With respect to claim 23, A method as claimed in claim 20, further comprising, subsequent to step d):

e) displaying for a first time (0126; e.g. a "trial play" i.e. single use) in the hand portable device a second data assemblage (0123 "per song" indicates the method applicable to each [additional/second] file) of the plurality (0037; e.g. "...system and method that sends data such as documents, email, music files, XML content, etc. (hereinafter "content)) without regard to the first security mechanism, and responsive to the displaying for the first time (0126; e.g. a "trial play" i.e. single use) the second data assemblage (0123 "per song" indicates the method applicable to each [additional/second] file) automatically changing the data attribute of the second data assemblage from the first type to the second type; and

f) in response to changing the data attribute of step e), automatically restricting further display (0120, 0127) of the second data assemblage using the first security mechanism (0120; "the trial level access permits the user is permitted to listen to the song/track once and thereafter is precluded from listening").

With respect to claim 33, A hand-portable device comprising:

- an input configured to receive of a password (0092, drawing reference 900);
- a memory (0068) configured to store data (0037; content);
- a display (0041) configured to display means for displaying the data (0037; content); and
- a processor (0086) configured arranged to detect that the data (0037; content) has been displayed for a first time (0126; e.g. a "trial play" i.e. single use) at the display means and automatically responsive to detecting that the data has been displayed for the first time to restrict subsequent (0120, 0127) display of the data (0037; content) using a first security mechanism involving the password (0120; e.g. "...is precluded from listening without again obtaining the proper authorization." and 0138), wherein the processor (0086) does not restrict the data being displayed for the first time using the password (0120; "the trial level access permits the user is permitted to listen to the song/track once and thereafter is precluded from listening").

With respect to claim 34, A hand-portable device as claimed in claim 33, further comprising a transceiver configured to wirelessly receive means for wirelessly receiving the data at the hand portable device (figure 11, customer site).

With respect to claim 36, A hand-portable device as claimed in claim 33, wherein the processor is configured to discriminate access control means discriminates the type of data (0126; e.g. a song file), and to automatically restrict subsequent display of the

data using the first security mechanism, if the data is of a defined type or types (0120, 0127).

With respect to claim 37, A hand-portable device as claimed in claim 36, wherein the input is operable to enable a user of the device to specify the defined type(s) (fig. 3).

With respect to claim 39, A hand-portable device as claimed in claim 33, wherein the data defines at least one of: a SMS message, a MMS message, an instant messaging history, a picture file; an audio file; a video file; and a collection of bookmarks (0037).

With respect to claim 40, A hand-portable device as claimed in claim 33, wherein the data are created in the device (drawing reference 2001 and 0091).

With respect to claim 46, A memory embodying a computer program and readable by a processor for enabling a mobile telephone to perform actions directed to restricting access to a first data assemblage, the actions comprising:

a) storing (0041, 0080; e.g. downloading content) a plurality of data assemblages (0037; e.g. "...system and method that sends data such as documents, email, music files, XML content, etc. (hereinafter "content")) in a mobile telephone (0131);

b) storing at least one data attribute (0122; e.g. "songs/tracks are stored with certificates and are ready for sales..." and 0126; e.g. "the trial key that is preferable

attached to the content") for each (0123; "...certificate generated per song...") of the plurality of data assemblages (0037; e.g. "...system and method that sends data such as documents, email, music files, XML content, etc. (hereinafter "content")), the data attribute (0122; e.g. "songs/tracks are stored with certificates and are ready for sales..." and 0126; e.g. "the trial key that is preferable attached to the content" as well as DRM information, 0125) indicative of first display (0120) of the data assemblage in the mobile telephone (0131);

c) displaying for a first time (0049, 0126; e.g. a "trial play" i.e. single use or viewing one time only) in the mobile telephone (0131) a first data assemblage of the plurality without regard to a first security mechanism (0120; "the trial level access permits the user is permitted to listen to the song/track once and thereafter is precluded from listening"), and responsive to the displaying for the first time (0126; e.g. a "trial play" i.e. single use) automatically changing the data attribute (0120, 0127) of the first data assemblage from a first type to a second type (0031, 0126-0127; e.g. therein it is described that a file subject to a trial use is able to be accessed and thereafter not entitled to further playing. As such, an attribute for viewing is described to be changed after expiration of the trial period/use); and

d) in response to changing the data attribute (0031, 0126-0127) of step c), automatically restricting further display of the first data assemblage in the mobile telephone (0131) using the first security mechanism (0120; "the trial level access permits the user is permitted to listen to the song/track once and thereafter is precluded from listening" without again obtaining the proper authorization).

With respect to claim 52, A hand portable device as claimed in claim 33, wherein:

the data comprises a first data assemblage (0126; content);

the memory is further configured to store a second data assemblage (0123 "per song" indicates the method applicable to each [additional/second] file), the display is further configured to enable a user to display the second data assemblage (0123 "per song" indicates the method applicable to each [additional/second] file), and the processor access control means is further configured arranged to detect that the second data assemblage has been displayed for a first time at the display and automatically responsive to detecting that the second data assemblage (0123 "per song" indicates the method applicable to each [additional/second] file) has been displayed for the first time to restrict subsequent display of the second data assemblage (0123 "per song" indicates the method applicable to each [additional/second] file) using the first security mechanism (0120; "the trial level access permits the user is permitted to listen to the song/track once and thereafter is precluded from listening") involving the password, wherein the processor is configured to not restrict the second data assemblage (0123 "per song" indicates the method applicable to each [additional/second] file) being displayed for the first time using the first security mechanism (0120; "the trial level access permits the user is permitted to listen to the song/track once and thereafter is precluded from listening").

With respect to claim 53, the hand portable device of claim 52, wherein at least one of the first data assemblage and the second data assemblage is created in the device (0079 and drawing reference 2001).

With respect to claim 54, the hand portable device of claim 33, wherein the first security mechanism comprises a data attribute (0122; e.g. "songs/tracks are stored with certificates and are ready for sales..." and 0126; e.g. "the trial key that is preferable attached to the content") associated with the data (0037; e.g. content), said data attribute indicative of whether the data (0037; e.g. content) has been displayed for the first time, and wherein the processor is configured access control means is arranged to restrict subsequent display (0120, 0127) of the data (0037; e.g. content) by changing the data attribute (0120, 0127) so as to require entry of the password at the input which comprises a user input means (0092, drawing reference 900).

With respect to claim 55, the hand portable device of claim 60, wherein:
the user input means comprises a user input, the memory means comprises a memory, the display means comprises a display and the access control means comprises a processor (0086 and 0130 describes a device with such components).

With respect to claim 56, the memory of claim 46, the actions further comprising:
e) displaying for a first time (0126; e.g. a "trial play" i.e. single use) in the hand portable device a second data assemblage (0123 "per song" indicates the method

applicable to each [additional/second] file) of the plurality (0037; e.g. "...system and method that sends data such as documents, email, music files, XML content, etc. (hereinafter "content")) without regard to the first security mechanism, and responsive to the displaying for the first time (0126; e.g. a "trial play" i.e. single use) the second data assemblage (0123 "per song" indicates the method applicable to each [additional/second] file) automatically changing the data attribute of the second data assemblage from the first type to the second type; and

f) in response to changing the data attribute of step e), automatically restricting further display (0120, 0127) of the second data assemblage using the first security mechanism (0120; "the trial level access permits the user is permitted to listen to the song/track once and thereafter is precluded from listening").

With respect to claim 57, the memory of claim 56, the actions further comprising, before step a):

wirelessly receiving the first data assemblage at the hand portable device (0045) and before step e), wirelessly receiving the second data assemblage at the hand portable device (0098).

With respect to claim 58, the memory of claim 56, further comprising: discriminating the type of a data assemblage (0126; e.g. a song file), wherein the automatic restriction of further display (0120, 0127) at step d) is enabled only for the first data assemblage of a defined type or types (0126) and the automatic restriction (0120,

0127) of further display at step f) is enabled only for the second data assemblage of the defined type or types (0123 "per song" indicates the method applicable to each [additional/second] file).

With respect to claim 60, A hand-portable device comprising:

user input means for user input of a password (0092, drawing reference 900);

memory means (0068) for storing data (0037; content);

display means for displaying the data (0037; content); and

access control means (0086) arranged to detect that the data (0037; content) has been displayed for a first time (0126; e.g. a "trial play" i.e. single use) at the display means and automatically responsive to detecting that the data (0037; content) has been displayed for the first time (0126; e.g. a "trial play" i.e. single use) to restrict subsequent display of the data (0037; content) using a first security mechanism involving the password (0120; e.g. "...is precluded from listening without again obtaining the proper authorization." and 0138), wherein the access control means does not restrict the data being displayed for the first time using the password (0120; "the trial level access permits the user is permitted to listen to the song/track once and thereafter is precluded from listening").

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7, 38, and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meffert as applied to claims , 3, 5-6, 8-9, 20, 23, 33-37, 39-40, 46, and 52-58 and 60 above, and further in view of Schoch et al (Schoch hereafter) who filed U.S. Patent 6,460,140.

With respect to claim 7 and similar claims 38 and 59, Although Meffert teaches use of a password (e.g. 0128), they do not appear to expressly disclose a user specification of a password for use in the first security mechanism.

Schoch, however, teaches a user specification of a password (col. 3 line 61-67) for user chosen password to unlock data.

Accordingly, In the same field of endeavor, (i.e. content licensing), it would have been obvious to one of ordinary skill in the data processing art at the time of the present invention to combine the teachings of the cited references because the user chose password (i.e. a user specified password) of Schoch would have given the user of Meffert further control over their content in accordance with their (sender's) wishes (see Meffert, 0046). Furthermore, such a need for a user specified password is apparent in Meffert (e.g. 0046, 0049) to give the user control when disseminating and proliferating the content.

Claims 38 and 59 contain essentially the same subject matter and therefore are rejected with the same rationale.

Response to Arguments

Applicant's arguments (see response filed 10/6/2008) with respect to the pending claims have been considered but are moot in view of the new ground(s) of rejection as presented by Meffert and Meffert in view of Schoch in the foregoing.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent 7,203,966 to Abburi et al. The subject matter disclosed therein pertains to the pending claims (i.e. one-time usage and trial versions of content).

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT TIMBLIN whose telephone number is (571)272-5627. The examiner can normally be reached on M-Th 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John R. Cottingham can be reached on 571-272-7079. The fax phone

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/ROBERT TIMBLIN/
Examiner, Art Unit 2167

/John R. Cottingham/
Supervisory Patent Examiner, Art
Unit 2167